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Paper No. 55

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In re Application of
Richard H. Hall et al
Application No. 09/172,577
Filed: October 13, 1998
Attorney Docket No.: 5434
For: INERT GAS BLANKET FOR
PROTECTION FROM OXIDATION

DECISION ON PETITION
UNDER 37 CFR §1.181

This is a decision on appellants' petition under 37 CFR 1.181 filed June 11, 2003 requesting that the declaration under 37 CFR 1.131 filed June 24, 2002 be entered.

The petition is **GRANTED**.

The record reflects that on November 10, 1999 a non-final Office action was mailed requiring: restriction between Group I, claims 16-20, directed to a method of providing inert gas blanket to a machine have oleaginous liquid, and Group II, claims 21-36, directed to an apparatus of protected item with inert gas; and upon telephonic election of Group I rejecting claims 17-20 under 35 USC 112, second paragraph, rejecting claims 16-18 under 35 USC 102(b), and rejecting claims 19 and 20 under 35 USC 103. On February 10, 2000 an interview was held. On February 14, 2000 appellants' filed an amendment amending claims 16, 17, 19, and 20, canceling claim 18, 21-38, 40, 41, 44, 45, 48, and 49 and adding claims 38-53 and arguing the rejections of record. On February 25, 2000 appellants' filed a letter stating the substance of the interview. On June 1, 2000 a final Office action was mailed withdrawing claims 54-60 as being drawn to a method of controlling combustion in a fuel tank, rejecting claims 16, 17, 39, 42, 43, and 47 under 35 USC 112, first paragraph, rejecting claims 17, 39, 43, 46, and 47 under 35 USC 112, second paragraph, claim 16 under 35 USC 102(b), and claims 16, 17, 19, 20, 39, 42, 43, 46, 47, and 50-53 under 35 USC 103. On September 21, 2000 appellants' filed an amendment under 37 CFR 1.116 amending claims 17, 19, 20, 46, 47, 51, and 52, canceling claims 54-60, and adding claims 61-67. On October 2, 2000 an Advisory Action was mailed denying entry of the amendment under 37 CFR 1.116. On October 10, 2000 a Continued Prosecution Application was filed. On November 21, 2000 a non-final Office action was mailed objecting to the amendment filed February 14, 2000 under 35 USC 132, rejecting claims 16, 17, 19, 20, 39, 42, 43, 46, 47, and 51-53 under 35 USC 112, first paragraph, rejecting claim 16 under 35 USC 102(b), rejecting claims 16, 17, 19, 20, 39, 42, 43, 46, 47, 50-53, and 61 under 35 USC 103, allowing claims 64-67, and

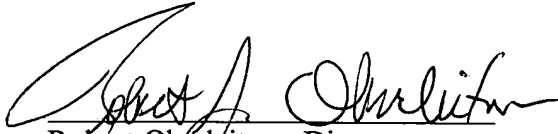
objecting to claims 62 and 63 as containing allowable subject matter. On February 26, 2001 appellants' filed an amendment amending claims 62, 63, 66, and 67, adding claim 68 and arguing the objections and rejections set forth in the previous Office action. On May 2, 2001 a final Office action was mailed objecting to the amendment filed February 14, 2000 under 35 USC 132, rejecting claims 16, 17, 19, 20, 39, 42, 43, 46, 47, and 51-53 under 35 USC 112, first paragraph, rejecting claims 16 and 68 under 35 USC 102(b), rejecting claims 16, 17, 19, 20, 39, 42, 43, 46, 47, 50-53, and 61 under 35 USC 103, allowing claims 64-67, and objecting to claims 62 and 63 as containing allowable subject matter. On July 25, 2001 a request for reconsideration was filed. On July 27, 2001 an Advisory Action was mailed stating that the request for reconsideration was not persuasive. On July 27, 2001 appellants' filed a supplemental response. On August 1, 2001 an Advisory Action was mailed stating that the request for reconsideration was not persuasive. On August 2, 2001 appellants' filed a Notice of Appeal. On September 27, 2001 appellants' filed an Appeal Brief. On October 3, 2001 an Examiner's Answer was mailed. On January 29, 2002 appellants' filed a Reply Brief. On February 12, 2002 the reply brief was noted by the examiner. On June 11, 2002 the application was remanded to the examiner for consideration of an Information Disclosure Statement (IDS) filed July 27, 2001. On June 28, 2002 a letter indicating the examiner had considered the IDS of July 27, 2001 was mailed. On June 24, 2002 appellants' filed a declaration. On July 16, 2002 a letter, which treated the declaration as an IDS, was mailed indicating that the information submitted June 24, 2002 had not been considered by the examiner. On July 31, 2002 a letter requesting consideration of the declaration filed June 24, 2002 was filed. On September 3, 2002 an IDS was filed by appellants'. On September 24, 2002 the application was remanded to the examiner for consideration of IDS filed September 3, 2002. On November 4, 2002 a letter was mailed stating the IDS file September 3, 2002 had been considered by the examiner. On February 26, 2003 the application was remanded to the examiner for clarification as to whether or not the declarations of June 24, 2002 and August 30, 2002 had been considered. On April 7, 2003 a letter was mailed indicating that the declaration file June 24, 2002 had not been entered and that the declaration filed August 30, 2002 had been entered.

Appellants' argue that the declaration is timely because the evidence being relied upon therein was published after the mailing of the Examiners Answer.

With regard to appellant's argument that the declaration is timely, MPEP 716.01 states that a declaration submitted under 37 CFR 1.131 and other evidence traversing rejections is considered timely if submitted after final rejection and submitted (i) with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection, or (ii) with a satisfactory showing under 37 CFR 1.116(b) or 37 CFR 1.195, or (iii) under 37 CFR 1.129(a). As the evidence relied upon in the declaration was published after the mailing of the Examiner's Answer appellants' have provided a proper showing under 37 CFR 1.116(b) or 37 CFR 1.195. Accordingly, the examiner will consider the declaration.

The petition is **GRANTED**.

The application will be returned to the examiner for immediate action consistent with this decision including the preparation of a letter addressing the declaration filed June 24, 2002.

A handwritten signature in cursive script, appearing to read "Robert Oberleitner", written over a horizontal line.

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